



PC AGENDA: 12-12-01

ITEM: 4.d.

Memorandum

TO: PLANNING COMMISSION

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: December 6, 2001

COUNCIL DISTRICT: 10

**SUBJECT: PROTEST OF A NEGATIVE DECLARATION FOR PLANNED
DEVELOPMENT REZONING FILE NO. PDC 01-02-028**

BACKGROUND

This memorandum represents staff's response to a protest of a Draft Mitigated Negative Declaration (MND) that was prepared for a Planned Development Rezoning to allow up to 357 single-family and multi-family attached residential units on a 15-gross-acre-site. The subject site is located at the northeast corner of Capitol Expressway and Vistapark Drive.

The Negative Declaration was circulated on October 22, 2001 to property owners and tenants within 1,000 feet of the project site. The VEP Community Association filed a letter protesting the findings contained in the MND on November 13, 2001.

ANALYSIS

The MND for this project was prepared in conformance with the California Environmental Quality Act (CEQA). CEQA Guidelines, Section 15070(b)(1), specify that the City may issue an MND for a project when:

- A) The Initial Study for the project identifies one or more potentially significant effects, and
- B) The City develops mitigation measures that will avoid or mitigate these impacts to a less-than-significant level, and these measures are agreed to by the applicant prior to circulation and public review of the draft MND.

The Initial Study prepared for this project examined the potential for the project to result in significant environmental impacts. The Director of Planning, Building, and Code Enforcement, in conjunction with the Director of Public Works, concluded that the project would result in a significant environmental (traffic level of service) impact on the intersection of Highway 87 and Capitol Expressway, and developed mitigation measures to address this impact. The mitigation

that was identified included construction of an additional third left-turn lane on the SR 87 southbound off-ramp onto eastbound Capitol Expressway, and the payment of a fair-share contribution towards the construction of a second left-turn lane from eastbound Capitol Expressway to northbound Vistapark Drive. The Director of Planning determined that implementation of these measures would mitigate the project's impacts to a less-than-significant level. The applicant signed an agreement accepting these required mitigation measures prior to circulation of the MND for public review. Other potential impacts of the project regarding air quality, biological resources, cultural resources, geology and soils, hazardous materials, hydrology and water quality, and noise, were determined to be less than significant with the inclusion of mitigation measures that were identified in the initial study.

The City of San Jose received one letter of protest in response to the Draft MND during the public circulation period. The letter challenges the adequacy of the mitigation measures that were identified to reduce the project's potential impacts to a less-than-significant level. The letter's key points are reproduced in sections on the following pages, followed by the City's response to the issues raised in the letter. In addition, a complete copy of the letter itself is attached to the end of this document.0

RESPONSE TO COMMENTS RECEIVED ON NOVEMBER 13, 2001 FROM V.E.P. COMMUNITY ASSOCIATION

▪ COMMENT 1

The first traffic issue is a huge error in level of service (LOS) measurement at the nearby Route 87 northbound onramp on Narvaez Avenue. The Initial Study shows peak morning and afternoon conditions to be LOS B. Anyone who has ever used that freeway approach will know, intuitively and without a doubt, that morning traffic conditions are much closer to LOS F than LOS B. Morning commute period traffic routinely backs up dangerously onto and across Capitol Expressway. Frustrated motorists resort to a variety of tactics (illegal passing, u-turns, turn-about, etc.) to battle their way through the congestion. It's intolerable.

Allowing even ONE more car to be added to this mess without serious mitigation would be completely irresponsible. This significant public safety and liability impact was overlooked: it must be analyzed and mitigated.

City staff has admitted that a serious flaw exists in their modeling technique. We agree. Mitigation is being required for the southbound Route 87 exit at Capitol. If a correct assessment of LOS was available, we believe mitigation would also be required at the northbound approach. Our concern is that this modeling error will allow Bella Villaggio and other projects to go forward without having to pay for appropriate traffic congestion remedies.

RESPONSE TO COMMENT 1

The existing traffic back-up for motorists traveling toward northbound Highway 87 by way of the Narvaez Avenue on-ramp is directly attributable to the metering lights near the top of the on-ramp. The lights are activated during the morning commute hours. Adequate lane capacity exists

on Narvaez Avenue to accommodate the number of vehicles moving toward northbound 87 without the problems referenced in this comment. However, the flow of traffic is ultimately restricted by the metering lights, which are set to a limit of 900 cars per hour, resulting in a “bottleneck” effect that causes the impact described above. In short, the intersection of Narvaez and the northbound 87 on-ramp would operate at Level of Service (LOS) of “B” were it not for the metering lights, which are operated by Caltrans and are not subject to regulation or alteration by the City.

The City’s Transportation Level of Service Policy (Council Policy 5-3) currently requires mitigation consisting of increased lane capacity, restriping, or other improvements if a project’s traffic impacts would:

- A) reduce a signalized intersection from LOS “D” or better to “E” or “F,” **or**
- B) at an intersection that is already operating at LOS “E” or “F,” increase the vehicle-to-capacity ratio by 1% or more, and increase critical delay by four seconds or more.

The Level of Service Policy was intended to address and reduce the delays that are experienced by motorists at congested intersections. However, it does not account for external, uncontrollable factors like the existing metering lights on the 87 on-ramp. In the present case, an intersection that should be operating at LOS “B” based on its volume-to-capacity ratio does in fact function more like LOS of “E” or “F” due to the metering lights, which are a built-in constraint that is beyond the City’s control.

However, the suggestion that adding one car to the existing situation should require the approval of this project to be conditioned on the applicant providing traffic mitigation for the intersection is incorrect. Such a condition would be inconsistent with the LOS policy, and with the fundamental “nexus” requirement that conditions of approval be reasonably related to a project’s impacts.

Based on the modeling built into the approved traffic study, the project will generate an estimated 150 net additional outbound trips during the AM peak hour, 38 of which are projected to travel toward northbound 87 on Narvaez Avenue. Although no increase is desirable, the projected number of cars represents a small incremental increase over the existing volume of traffic, and will likely have only a limited effect on the congestion that takes place during the peak-hour morning commute at this location. However, the essential point is that the City’s LOS Policy does not account for constraints that are outside of the City’s control and for which no mitigation is possible. The proposed project conforms to the City’s LOS policy in its current form. Therefore, no additional traffic mitigation is required to address the issue raised in this comment. For more background discussion on this subject, please see the memorandum from the project’s traffic consultant, attached as an appendix at the end of this document.

▪ COMMENT 2

Our second traffic concern is over the requirement to increase queuing capacity for left turns from eastbound Capitol to northbound Vistapark Drive. The Initial Study shows two mitigating alternatives: either make it a double left turn lane or make the existing left turn pocket longer. Under either alternative, we believe that the sound wall on the south side of Capitol will be inadequate to meet current noise standards in adjacent homes.

VEP members who live at the end of Hastings Park Court back up onto Capitol Expressway. Their homes are very close to the roadway. The sound wall there was built more than 30-years ago, when traffic on Capitol Expressway was a tiny fraction of today's. Moreover, noise attenuation standards 30-years ago were far less stringent than they are today. We question whether that sound wall is adequate even without added traffic from proposed development. Surely, adding more traffic and queuing capacity to the left turn lane will elevate noise levels. This significant impact was overlooked: it must be analyzed and mitigated.

RESPONSE TO COMMENT 2

The noise level in the immediate area is determined by the approximately 37,000 daily vehicle trips on Capitol Expressway, as well as large commercial airplanes approaching San Jose International Airport. The project would add approximately 20 peak-hour left-turn movements onto Vistapark Drive. Neither the proposed change in the left-turn lane configuration from eastbound Capitol Expressway onto northbound Vistapark Drive, nor the relatively small (in comparison to existing conditions) incremental increase in traffic volume that would result from this project is expected to have any perceptible effect on the existing ambient noise level. It should be noted that the increased storage capacity of the left-turn lane onto Vistapark Drive is only likely to be used during "peak-hour" return trips by motorists returning home in the evening.

Moreover, because the homes on Hastings Park Court are mostly one-story, most of what projects above the existing sound wall in that area is rooftop. There is very little living area that extends above the sound wall and could therefore be affected by any minimal increase in noise resulting from this project. In addition, raising the sound wall could create an unintended negative visual impact for residents of the area while producing little or no measurable change in noise attenuation. Therefore, no additional mitigation should be required. Staff has not been contacted by any residents of Hastings Park Court with regard to the issue raised in this comment.

■ COMMENT 3

Our third traffic-related concern is for the lack of a requirement for landscaping in the median of Capitol Expressway. This concern relates to the need for visual and sound buffering, protection against cross-over accidents, and the desire to improve the appearance of this major gateway into our area. (It's just plain UGLY!) Recognizing this, and acknowledging the relatively low cost of doing so, Pinn Brothers has expressed a willingness to install landscaping there. We urge the city and county to take advantage of this opportunity.

Beyond beautification and sound attenuation, landscaping will also provide a substantial safety benefit. As a result of recent repaving of Capitol Expressway, median island curb height there has been reduced significantly. Our first-hand observation revealed that the curb is only about 1-inch high in some areas. As traffic increases on Capitol Expressway, this very real safety issue will grow worse. We believe that, where modifications to the median are being proposed (for left turn pockets, etc.), mitigation should include restoration of curbs to standard height. In those and other areas, cross-over accidents should be further prevented by planting high-canopy trees

and bushes, possibly hiding a cable barrier within. This significant safety impact was overlooked: it must be analyzed and mitigated.

RESPONSE TO COMMENT 3

Capitol Expressway and other expressways within the San Jose's city limits are under the permit jurisdiction of the County of Santa Clara. Any proposed right-of-way modifications or improvements to an expressway must be reviewed and approved through the County Roads and Airports Department's permitting process. This project has been referred to, and reviewed by, County Roads and Airports staff. County staff will also have an opportunity to offer further comments at the subsequent Planned Development Permit stage. County staff has not indicated, to date, that the County wishes to require median island improvements as a condition of approval for this project. However, staff is willing to coordinate with the County at the subsequent Permit stage to determine whether improvements of the type suggested above are warranted.

The concerns referenced in the above comment address an existing situation that predates, and is only partially related to, the proposed project. Adding landscaping to the median island and raising its height of may be desirable goals, and should be further analyzed in the context of future light rail plans and other potential long-term improvement programs in the area. However, no determination has yet been made that the applicant should be required to provide these improvements as a condition of approval for the proposed rezoning. Not including the suggested median island improvements in the scope of the presently proposed rezoning does not represent an environmental impact.

▪ COMMENT 4

***Schools:** VEP members are very concerned about where the estimated 143 elementary (K-8) children from this project will go to school. San Jose's recent attitude about allowing development in the absence of supporting classroom facilities is unacceptable to us. This is a serious threat to the welfare of our children. It constitutes a direct assault on our man-made environment; a social and fiscal impact that reaches beyond the city's technical responsibility, but not beyond her taxpayer's. We believe that our government is and must be a continuum of cooperative jurisdictions that work together for our benefit, not an independent series of fiercely competing entities. Forcing school districts to build facilities and add personnel to support new development amounts to a hidden tax and a gift to the development community.*

San Jose parents rebelled against this callous approach years ago when our crowded schools were forced into double-sessions; the city is again pushing the limits of our tolerance. There is NO benefit to us in this kind of growth. This significant impact must be analyzed and mitigated.

RESPONSE TO COMMENT 4

The developers of all residential projects in the State of California are required to pay school impact fees that are specified, imposed, and collected by the state on a per-square-foot basis. Cities are expressly prohibited from imposing additional fees over and above those mandated by the state. State law also prohibits cities from denying approval of a land use project because of inadequate school facilities. Local school districts do retain consultants to advise them of current

and future development so they can plan accordingly for the future availability of school resources. However, the availability or adequacy of local school facilities is not an environmental issue for purposes of CEQA review and conformance.

▪ **COMMENT 5**

City Parks: The Initial Study identifies five city parks within ¾ mile of the project site, but admits that four of them are not really accessible owing to their being on the other side of Capitol Expressway. The remaining park will also be across a very wide and busy Vistapark Drive. Would you want your kids to cross that street on their way to a park? Although the developer is paying an enormous fee for parkland dedication, we see no remedy in that for the recreational needs of kids who will live at Bella Villagio. The CITY should make a real effort to find viable mitigation for their unfulfilled needs; simply collecting a fee does not remove the barriers to city park access.

Two city parks in VEP's membership area are still waiting for completion after more than thirty years. Kids who live in Bella Villagio will probably never have safe pedestrian access to a city park. This significant impact was ignored: it must be analyzed and mitigated.

RESPONSE TO COMMENT 5

It would be desirable for all residential projects in the City of San Jose to have public parks located in close proximity with excellent pedestrian connectivity. However, the location of the subject site at the corner of two busy, major public streets will intrinsically limit the extent to which a pedestrian-oriented environment can be provided to residents who wish to walk to nearby facilities. Rather than walk, it is likely that many future residents of the project will drive to local parks, which is not uncommon in other automobile-oriented areas of the City.

While convenient and safe “walkability” to nearby parks is desirable, pedestrian accessibility to public parks for future residents of the project is not an environmental issue for purposes of CEQA review for this project. It is worth noting that the proposed project includes considerable recreational features such as pools, clubhouses, a tot lot, and several large areas of common open space that are well in excess of the Residential Design Guidelines’ suggested minimums. While these kinds of amenities do not necessarily fully substitute for public parks and all of the roles they serve, the project does a better-than-average job of providing for its future tenants’ recreational needs on-site.

▪ **COMMENT 6**

On the subject of recreation, we saw no reference to the impacts of removing the very popular golf driving range facility. Where will golfers go after that facility has been removed? This is the second major recreation facility to be eliminated in our immediate area. We believe the city should take our recreation needs at least as seriously as it does the housing needs of people who don't even live here yet. This significant impact was ignored: it must be analyzed and mitigated.

RESPONSE TO COMMENT 6

The project site, which underwent a General Plan Amendment last year (File No. GP00-07-002), has a designation of Medium High Density Residential on the general Plan Land Use/Transportation Diagram. The proposed project is consistent with that designation, while the existing driving range is not. The driving range, which has been in place on the site since 1994, was intended by the property owner as a temporary, “placeholder” land use, not as the final, long-term development of the site. Previously, in 1993, the site’s GP designation was changed to Private Recreation to allow the driving range. The staff report for the 2000 GP Amendment noted that the 1993 Amendment “was approved because of the short supply of private recreational facilities in the area, yet staff recognized the site was appropriate for higher density housing. In fact, it was generally understood that the driving range would be an interim use of the property.” Further, the driving range is not a public resource, but rather a private business concern whose owners have a proprietary right to cease its operations at such time as they see fit.

The loss of a recreation facility such as the existing driving range does not represent an environmental impact for purposes of CEQA. In fact, golf-oriented land uses are often considered a net detriment to the environment because of their intensive use of herbicides and pesticides.

CONCLUSION

The Initial Study prepared for this project examined the potentially significant environmental impacts for the proposed Planned Development Rezoning. The Director of Planning concluded that the mitigation measures that were developed for the project’s significant impact on traffic level of service would reduce the project’s impact to a less-than-significant level. The protest letter received in response to the Draft MND does not contain substantial evidence to support a “fair argument” that the project would have a significant effect on the environment. Consequently, staff recommends that the MND be upheld.

ALTERNATIVE ACTIONS

The alternatives available to the Planning Commission are to:

- 1) uphold the MND for the proposed rezoning in its current form, or
- 2) require the preparation of an EIR for the proposed project.

RECOMMENDATION

The Director of Planning, Building, and Code Enforcement recommends that the Planning Commission uphold the MND prepared for this Planned Development Rezoning.

Joseph Horwedel, Acting Director
Planning, Building, and Code Enforcement

Appendix 1

Supplement to the Site Traffic Analysis titled “Bella Villagio,” prepared by Parsons Transportation Group, dated May 2001. Supplement submitted on November 29, 2001.

Existing Condition Field Observations

As part of the traffic analysis, field observations were conducted at the Highway 87/Narvaez Avenue intersection during the A.M. and P.M. peak hours. Existing condition level of service (LOS) calculations indicate that both the A.M. and P.M. peak hour LOS at this intersection is LOS B. Field observations, however, indicate the calculated LOS may not be representative of actual conditions in the A.M. peak hour.

The major constraint at this intersection is the northbound Highway 87 on-ramp at Narvaez Avenue. This two-lane on-ramp, like all on-ramps within the Highway 87 corridor, is metered in the peak flow direction. The ramp meter, operational between 6:00 A.M. and 9:00 A.M., controls the flow of traffic onto Highway 87. The metering rate for each lane is set at 900 vehicles per hour per lane—the maximum allowed by the California Department of Transportation (Caltrans). As is common where ramp metering is implemented, traffic queues onto the adjacent local and arterial streets (such as Narvaez Avenue and Capitol Expressway), creating significant delays in an attempt to maintain free-flow traffic on the freeway. It is a tradeoff where maintaining free flow traffic on a system freeway is prioritized over the operations of local roadways. At the maximum metering rate allowed by Caltrans (900 vphpl), only 30 vehicles per minute are released onto northbound Highway 87, significantly less than the actual demand.

Field observations reveal that the on-ramp queues spill back to the intersection of Narvaez Avenue and Highway 87. In turn, this affects traffic along both approaches of Narvaez Avenue—northbound for vehicles intending to turn left onto the on-ramp, and southbound for vehicles intending to turn right onto the on-ramp—during the A.M. peak period. The signal at the intersection is actuated to allow continuous green time for the vehicles turning left onto the on-ramp from Narvaez Avenue until triggered by traffic from the northbound off-ramp. Vehicles traveling southbound on Narvaez Avenue queue back halfway to the intersection of Hillsdale Avenue. It was observed that some southbound vehicles remain in the right-hand turn lane while others utilize the southbound through lane to make an illegal right-hand turn onto the northbound Highway 87 on-ramp.

The queue on northbound Narvaez Avenue extends from the northbound Highway 87 interchange south through the Capitol Expressway intersection, affecting both the eastbound and westbound Capitol Expressway approaches as well as the northbound Narvaez Avenue approach located south of the Narvaez Avenue/Capitol Expressway intersection. During the peak hour, it takes a vehicle at the end of this queue approximately 15 minutes to enter onto northbound Highway 87. In addition, this queue of vehicles blocks the traffic attempting to turn from

eastbound Capitol Expressway onto northbound Narvaez Avenue and the traffic traveling north on Narvaez Avenue through the Capitol Expressway intersection. Thus, the queues of vehicles traveling eastbound and northbound do not clear in one signal cycle length.

Rather than waiting in the queue for the left turn lanes, some vehicles traveling northbound on Narvaez Avenue proceed through the northbound Highway 87 on-ramp intersection and make a U-turn north of the intersection in an attempt to avoid the lengthy queue. Although there are two left turn lanes from northbound Narvaez Avenue onto northbound, the majority of vehicles attempt to maneuver into the inner left turn lane to avoid the vehicles traveling southbound who are making right turns onto the on-ramp.

Intersection LOS calculations do not take into account upstream constraints such as that which exists at the Highway 87 and Narvaez Avenue on-ramp. The LOS calculations take into account the number of vehicles passing through a specific point (i.e., the intersection), and not how many vehicles are actually trying to pass through that point, which accounts for the favorable LOS calculation in the A.M. peak hour.

Short of modifying Caltrans' policy to allow for a higher metering rate, there are very few practical solutions to this problem other than reconstructing the interchange in the northeast and southeast quadrants to provide a tight diamond configuration. This requires many trade-offs, such as a reduction in parking in the two VTA Park-n-Ride lots on Narvaez. The only benefit, however, would be to provide a third lane on the on-ramp (an HOV bypass lane) once the HOV lanes on Highway 87 become operational. It would not provide any significant amount of additional vehicle storage prior to the on-ramp, nor would it significantly reduce the queuing or delays, that exist today. The constraint would still be the ramp meters, which control the flow of traffic onto the freeway.

In the P.M. peak hour, it is the southbound direction of Highway 87 that experiences the peak direction flow. Therefore, the northbound on-ramps are not metered. The Highway 87/northbound Narvaez Avenue intersection in the P.M. peak hour operates much more efficiently, sans ramp meter, and is reflective of its LOS B calculation.

